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In re Application of
BLACKSHEAR et al.
U.S. App. No.: 10/511,362
PCT No.: PCT/US03/12348
Int. Filing Date: 18 April 2003
Priority Date: 19 April 2002
Attorney Docket No.: 4239-64828-02
For: COMPOSITIONS AND METHODS FOR
DIAGNOSTICS AND THERAPEUTICS
FOR HYDROCEPHALUS

DECISION ON PETITION
UNDER 37 CFR 1.10

This decision is issued in response to applicants' "Renewed Petition under 37 CFR 1.10" which is being treated as a petition under 37 CFR 1.10(d) filed 18 September 2006 requesting that the above-identified application be accorded a (35 U.S.C.) 371(c) filing date of 15 October 2004. Petitioner states that the application was deposited via "Express Mail" pursuant to 37 CFR 1.10.

BACKGROUND

On 14 October 2004, applicants filed a transmittal letter for entry into the national stage in the United States, which accompanied by, inter alia: the requisite basic national fee as required by 35 U.S.C. 371(c)(1); a copy of the international application; and an executed declaration.

On 25 April 2005, a Notification of Acceptance was issued identifying the 35 U.S.C. 371(c) date as 14 October 2004. Subsequently, an Official Filing Receipt was issued indicating a "FILING DATE" of 14 October 2004.

On 23 June 2005, applicants filed a "Petition to Correct Filing Receipt." Petitioner avers that the application was deposited via "Express Mail" pursuant to 37 CFR 1.10 on 15 October 2004, rather than 14 October 2004. In a decision dated 14 July 2006, applicants' request was dismissed without prejudice.

On 18 September 2006, applicant filed a "Renewed Petition under 37 CFR 1.10."

DISCUSSION

Applicant presently requests that the USPTO accord the above-identified national stage application a 35 U.S.C. 371(c) filing date of 15 October 2004. A review of the file reveals that the DO/EO/US correctly accorded an 35 U.S.C. 371(c) filing date of 14 October 2004 pursuant to 1.10(a). In the subject petition, applicants argue that the USPS incorrectly entered the "date-in" on the Express Mail label. 37 CFR 1.10(d) allows an applicant to petition to correct an incorrectly entered "date-in" of an Express Mail receipt and states that:

37 CFR 1.10(d) provides:

(d) Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and

(3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being within one business day after deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

The petition here was filed promptly after applicant learned of the 15 October 2004 35 U.S.C. 371(c) filing date; 37 CFR 1.10(d)(1) is therefore satisfied.

As noted above, the application materials included a certificate of mailing which listed the "Express Mail" label number used. Applicant has therefore satisfied the requirement of 37 CFR 1.10(d)(2).

A review of the application papers filed in the present application reveals that Express Mail label "EV514904915US" was placed on the Transmittal Letter (PTO-1390) prior to mailing thereof. The "Addressee Copy" of Express Mail label no. "EV514904915US" shows a "date in" of **14 October 2004**. However, information obtained from the United States Postal Service (USPS) Express Mail database shows that "EV514904915US" was accepted by the USPS on **15 October 2004**.

In view of the discrepancy between the 14 October 2005 date shown in the Customer Copy of Express Mail label "EV514904915US" and the 15 October 2004 date shown in the USPS database, it would not be appropriate to grant applicant's request to accord the present application a 15 October 2004 filing date at this time. Moreover, no corroborative evidence that came into being after the deposit and within one business day of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS has been presented. Accordingly, it is inappropriate, on the present record, to accord a filing date of 15 October 2004.

CONCLUSION

Applicants' petition under 37 CFR 1.10(d) requesting that a filing date of 15 October 2004 is **DISMISSED** without prejudice.

Any reconsideration on the merits of this petition must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.10."

Any further correspondence with respect to this matter should be addressed to: Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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